

ADMISSIBILITY OF ELECTRONIC EVIDENCE IN CRIMINAL TRIALS IN NIGERIA AND THE CHALLENGES OF NEW CRIMES

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ABSTRACT

There is no doubt that computers now dominate the world. Little wonder then, the current age has been variously described in like terms as “computer age”, “digital age”, “electronic age”, or “information and communication technology age”. The fact remains however, that computer, in its pre-eminence, has not abrogated statutes. We still live in the age of statutes. By their nature, statutes require updates from time to time, to meet up with societal changes and advancements. The Law of Evidence like every other aspect of law is dynamic. Its dynamism goes hand in hand with evolving nature of modern information and communication technology. This work traces the evolutionary trend of electronic evidence in Nigeria. It acknowledges the law on the subject matter as it was in its near zero tolerance for electronic-generated evidence. It celebrates the eventual arrival of the over delayed enactment of the Evidence Act, 2011 and its bold provisions for admissibility of electronic evidence by the courts. The work identifies the challenges new crimes pose to the bold provisions of the Act accepting electronic evidence as part of the body of laws in force in Nigeria. The article concludes with a bold, revolutionary recommendation for the utility and future of electronic evidence in Nigeria.

KEYWORDS: Digital Age, Electronic Evidence, Admissibility, Document, Crimes.

INTRODUCTION

As a threshold point, it is important to clarify that electronic evidence in criminal proceedings presents many of the same issues that arise in civil proceedings understandably, the Evidence Act, 2011, that embodies the extant rules for admissibility of electronic evidence applies to both criminal and civil trials. The opening statements of section 84(1) of the Evidence Act, 2011 elucidates this point as it declares in an unambiguous term: “in any proceeding, a statement contained in a document produced by computer shall be admissible as evidence”. The phrase “in any proceedings” indicates clearly that the provisions of the section apply to both criminal and civil proceedings with equal force. Accordingly, we are bound to contend with cases arising from or involving both civil and criminal proceedings in this exercise. The law on electronic evidence has come a long hard way to getting entrenched in Nigeria’s body of rules. It is generally held that the legal system does not always keep up with the pace of technological development. This seems to have been very evident in this regard. The judiciary on its own part has not fared better in discharging the duty and responsibility of giving proactive and purposeful interpretation to such laws.

One of the problems confronting Nigeria, regarding her laws, is legislative apathy or indifference to make the laws respond timeously to societal changes. For instance, the old Evidence Act (2004 now repealed) was a colonial legislation passed into law as the Evidence Ordinance in 1943 (Aguda 2007: 43). It is on record that the law did not witness any significant change until 2011. The failure to amend the Evidence Act for many decades rendered many of its provisions obsolete to accommodate changing conditions in the society. At a point, the repealed Evidence Act was aptly described as “anachronistic and not in line with global reality” (Aziken 2009; Erugo, 2020: 22). Pats Acholonu, JCA (as he then was), observed in *Egbue v. Arake* (1996: 710)

It must be clearly understood that our Evidence Act is now more than 50years old and is completely out of touch and out tune with the present scientific and technological achievements. Most of its sections are archaic and anachronistic and need thorough overhaul to meet the needs of our times. But alas it is with us now like an albatross on our neck (ibid, 710).

In a good number of other jurisdictions, laws and made to respond to societal needs and demands. For instance, in South Africa, the enactment of the Computer Evidence Act, 57 of 1983 was the outcome of a pronouncement made by Holmes, J.A. in *Narlis v. South African Bank of Anthens* (1976: 572) that a computer is not a person. The civil Proceedings Evidence Act, 1965 of South Africa did not provide for admissibility of computer printouts. Specifically, section 34(1) of the Act provided for admissibility of any “any statement made by a person in a document”. In *Narlis* case, the issue was admissibility of a computerized bank’s statement. It was held that the computerized document could not be admitted in terms of section 34(1) of the Civil Proceedings Act, 1965 since the document has not been made by ‘a person’ as contemplated under the Act. While holding that computer was not “a person”, the court declared:

it is essential to not that section 34(2) deals only with such a statement as referred to in sub-section(1). And straightaway, one finds that sub-section (1) refers only to any statement made by a person by a person in a document. Well, a computer perhaps, fortunately, is not a person” (ibid, 578).

The Computer Evidence Act 57 of 1983 of South Africa was, therefore, enacted to overcome difficulties encountered in *Narlis v. South African Bank of Anthens* (ibid). And, when the Act was found to be deficient in meeting up with further advancement in technology, the Electronic Communications and Transactions Act, 2002 was enacted. In Nigeria, a period of sixty-eight (86) years (1943-2011) elapsed to get the Evidence Act transformed to what it is today-the Evidence Act, 2011.

1. EMERGENCE OF ELECTRONIC EVIDENCE IN NIGERIA

The advent of electronic evidence into the jurisprudential arena of Nigeria was superstitious. However, in the course of time, electronic evidence assumed a place of prominence. Today, virtually all financial transactions, communication systems, modern automobiles and appliances, etc depend on computers while “our courts are daily inundated with questions relating to admissibility of electronically generated evidence” (Alaba 2018). Prior to Evidence Act, 2011 the issue of whether or not evidence generated from electronic devices was admissible within the framework of the old Evidence Act was highly contentious

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in legal circles, as opinions were divided, even amongst the courts. The Supreme Court before which the issue of admissibility of a computer printout first arose embraced it with open arms. In *Esso West Africa Inc. v. T. Oyegbola* (1969: 194) the apex court, in a pronouncement tinged with foresight, stated as follows:

The law cannot be and is not ignorant of the modern business methods and must not shut its eyes on the mysteries of computer. In modern times reproduction and inscriptions on ledgers or other documents by mechanical process are common place and section 37 cannot therefore only apply to books of account (ibid, 216-217).

The pronouncement of the court that “the law cannot be and is not ignorant of the modern methods of business” and its admonition that the law “must not shut its eyes to the mysteries of computer” contributed a most forward-looking approach commendable liberal stance. The foresight embedded in this pronouncement is best appreciated against the backdrop of the fact that in 1969 (more than 50 years ago), when *Oyegbola’s* case was decided, computers were, indeed, like objects of mystery, known to only few individuals. The story is different today. Such is the technological advancement witnessed in the last fifty years that, in the words of the Supreme Court of Nigeria, the law cannot afford to “shut its eyes”. It is important to note here, that the pronouncement of the Supreme Court under reference was made obiter. The initial euphoria that followed the Supreme Court’s obiter in *Oyegbola’s* case was, however, short-lived. In 1976, that is, thirteen years later, the Supreme Court in *Yesufu v. ACB* (1976: 328) in another obiter dictum sounded a note of warning and caution, emphasizing the need for legislative clarification before admitting documents generated from computers. The court said:

while we agree that for the purpose of sections 96(1)(h) and 37 of the Act, “bankers books” and “books of account” could include “ledgers cards”, it would have been much better, particularly with respect to a statement of account contained in document produced by a computer, if the position is clarified beyond doubt by legislation as had been done in England in the Civil Evidence Act (ibid, 524).

As it is well known, under the principle of *stare decisis*, an obiter is not a binding authority. It is a judge’s passing remark, which has nothing to do with the live issues for determination in the matter. It is the statement of the judge, by the way (*Alhaji Yesufu v. Egbe*, 1987: 341). It is, however, doubtful if any lower court can afford to treat an obiter of the highest court in the land with levity without reprehension, as it is good law that an obiter of the Supreme Court, could as well, in certain circumstances, assume the status of a *ratio decidendi* (Nwana v. FCDA 1999: 63; *Bangboye v. Univ. Ilorin*, 1991: 1; *Mackans v. Inlaks Ltd* 1980). Consequently, these two obiter dicta of the Supreme Court in *Oyegbola’s case* and *Yesufu’s case*, bestrode the lower courts with prodigious effects. The two pronouncements whereupon formed the yardsticks to which references were often made by the lower courts to determine whether or not a computer printout was admissible. A court that was determined to admit a computer printout readily found solace in *Esso v. Oyegbola* (*Anyabosi & Ors v. R.T. Briscoe Nig. Ltd.* 1987: 108; *Trade Bank v. Chami* 2003: 216; *FRN v. Femi Fani Kayode* 2010: 481) while a court that was determined to reject same took succor in *Yesufu v. ACB* (*UBA v. Sani*

Abacha Foundation for Peace and Unity (SAFPU) 2004: 516; Numba Commercial Farms Ltd & Anor v. NAL Merchant Bank Ltd & Anor 2001: 661).

1.1 *Judicial Decisions in Favour of Admissibility of Electronic Evidence*

In *Trade Bank v. Chami* (2003: 158) the provisions of section 38 of the old Evidence Act came up for consideration. By virtue of the provisions of the said section, entries into books of accounts, regularly kept in the course of business, where relevant whenever they referred to a matter into which the court has to inquire, but such statement shall not alone be sufficient evidence to charge any person for liability. Although, the said section did not provide for entries in computers, or computer printouts containing entries of account, the Court of Appeal, applying the Supreme Court dictum in *Oyegbola's case* (supra) held that section 38 of the Evidence Act should be interpreted to cover computer printouts. The court said:

The section of the Evidence Act... does not require the production of 'books of account' but make entries into such books relevant for admissibility. Exhibit 4 is a mere entry in the computer or book of account. Although, the law does not talk of 'computer' or 'computer printout' it is not oblivious to or ignorant of modern business world and technological advancement of modern jet age. As far back as 1969, the Supreme Court in the case of *Eso West Africa v. T. Oyegbola* envisaged the need to extend the horizon of the section to include or cover computer, which was virtually not in existence or at a very rudimentary stage at that time... On this authority, the provisions of section 38 covers in my respectful opinion, also electronic process such as computer and computer printouts comprised in Exhibit 4 are admissible (ibid, 216).

The spirit of progressivism behind the court's obiter dictum in *Oyegbola's case* was forfeited in 1987 by another decision of the Supreme Court in *Anyaeboji & ors v. R.T. Briscoe Nig. Ltd.* (1987), where the apex court clearly endorsed the admissibility of computer printouts as secondary evidence. The court held that computerized statements of accounts, after all, are not in the class of evidence, which is completely excluded by the Evidence Act. The court, therefore, further held that the computerized statements in issue in that case were rightly admitted as secondary evidence.

The Supreme Court in *Anyaeboji's case* must have proactively taken into consideration electronic evidence and its place in Nigeria within the globalised world. The judgment stands a classical example of how courts can assist in expanding the frontiers of the law by being foresighted in their decisions. We must also not lose sight of the proactive statements of Rhodes Vivour, JCA (as he then was) in the Court of Appeal decision in *Oghonoye v. Oghonoye* (2010) which came in 2010, before the enactment of the Evidence Act, 2011, wherein His Lordship categorically declared that "as the law stands today, computer printout of Bank Statement of Account can be admitted in evidence" (ibid, 23). The significance of this case lies in the assertiveness of His Lordship in declaring the "law as it stands". This depicts a sense of realism about what can be done to move the law forward. It is instructive that *Trade Bank v. Chami* (supra) was cited in that case.

It is also significant to note that the Court of Appeal, in *FRN v. Femi Fani-Kayode* (2010: 481) set aside the interlocutory decision of the Federal High Court, Lagos, in which the said court rejected, as inadmissible, the computer printouts of the accused statement of account,

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tendered by the prosecutor in the trial involving a Former Minister of Aviation, Femi Fani-Kayode, on an allegation of laundering ₦4billion. The penultimate court stated that the certified true copy of the computer generated bank statement of account of the respondent domiciled with First Inland Bank at Wharf Road, met all requirements of being admitted as an exhibit at the trial. Applying the decision of the Supreme Court in *Anyaebosei's case* the court held further that the document did not fall within the category of evidence made completely inadmissible by law.

1.2 *Electronic Evidence as a Matter of Science*

In the course of time, as admissibility of electronic evidence became more contentious and controversial, Nigerian courts become more creative. Nigerian courts took recourse to the application of the principal of judicial notice to admit electronic evidence. Electronic evidence was then treated as a matter of science to which courts were entitled to take judicial notice under section 74 of the repealed Evidence Act. The Court of Appeal, for instance, relied on the concept of judicial notice in admitting a computerized document in *Ojolo v. IMB (Nig) Ltd.* (1995: 304). The court held that it had become a notorious fact that commercial and banking operations in Nigeria had changed in keeping with the computer age such that the court could take judicial notice of them under section 74 of the Old Evidence Act.

1.3 *Judicial decisions against Admissibility of Electronic Evidence*

In respect to judicial decisions against admissibility of electronic evidence, the decision in *UBA v. Sani Abacha Foundation for Peace and Unity (SAPELU)* (2004: 516) readily comes to mind. Here, the Court of Appeal held that a statement of account contained in a document produced by a computer could not be admitted in evidence under the old Evidence Act until certain sections of the Act were amended. The court, while applying the dictum of the Supreme Court in *Yesufu v. ACB* (supra) stated thus:

Though the appellant's counsel made reference to the modern day practice of using computer in the day-to-day business of the bank, it is my opinion that the law still remains as it is it has not been amended by the National Assembly, although it is high time they did that and I am bound to apply the law as it is (ibid, 543).

The court then added:

It is quite unfortunate that in Nigeria no clarification has yet been done by way of amendment or promulgation of an Act to exempt the statement of account contained in a document produced by a computer from conditions stated in section 97 of the Evidence Act 1990. Hence, I will not deviate from my primary function in interpreting the law as made by the legislature to that of law making. I therefore hold that the lower court was in error when it admitted Exhibit D2 in evidence in this case (ibid).

Numba Commercial Farms Ltd & Anor v. NAL Merchant Bank Ltd & Anor. (2001: 543) and *Federal Republic of Nigeria v. Femi Fani-Kayode* (supra) were also decided along the same line. *Femi Fani-Kayode's case* was an interlocutory ruling in which the Federal High Court in Lagos rejected, as inadmissible, the computer printouts tendered by the prosecution in

the trial involving a Former Minister of Aviation on an allegation of laundering a sum of N46billion. The computer printouts of the accused's statement of accounts, which the prosecution tendered as evidence, were rejected by the trial court as inadmissible. Applying the Court of Appeal decision in *UBA v. SAPFU* (2001: 510), the court held that the provisions of section 97(1)(b) and (2) (b) of the Evidence Act did not cover the admissibility of computer print outs even if they are duly certified and relevant. The court then concluded thus:

I must also express the view that there is the urgent need for an amendment of the evidence Ac to cover admissibility of document made by means of computer printout since it is clear that those technological methods of producing document now forms part of day to day business transaction and particularly in banking circle (ibid).

1.4 *Electronic Evidence and the Nigerian Courts*

The courts are established to serve a very crucial role in the lives of citizens and the society it is create to serve. The society and its population are dynamic. The courts that service the judicial needs of such a society cannot therefore afford to remain static. The courts in Nigeria after initial skirmishes of equivocations have gone on to contend seriously with how best to treat electronically-generated evidence. One way that the contentions had been made is to call for legislative intervention (*FRN v. Femi Fani-Kayode*).

Electronic evidence is fundamentally different from the usual documentary evidence people have been used to over the years. It derives from advancement in technology witnessed in the last few years, which has made the existing rules guiding documentary called for re-examination and improvement. For instance, it is the advancement in technology that brought about the existence of computer discs, which is a storage medium in which information is embedded but which performs, in a different way, the same function as a filing cabinet where hard copy of documents are stored. An essential difference is the fact that it is much easier to change electronic evidence without detection, than it ever was in the hard copy world. The author of the electronic document may not even be aware that changes have been made. The need to update the existing rules of admitting documents in evidence at trials to accommodate the new species introduced by technology, therefore, become inevitable because old rules and laws cannot be made to apply to electronic evidence. In 2010 at the Judges and Khadis refresher course, the following observations were made:

One thread that has run through most of the cases in which electronically generated documents were rejected is the fact that the Evidence Act does not recognize such documents. But then, one basic fact that we have to accept and which stares us in the face glaringly is that the electronic revolution has reached Nigeria and is inexorably growing as part of the globalization phenomenon. Nigeria can certainly not allow herself to be left behind. Therefore, the need for Nigeria to update the Evidence Act has now become indisputably obvious and imperative (Ajilaye 2010: 25).

The negative effects of retaining the old order under the nation's extant evidence law then were highlighted thus:

it is imperative to mention here that rejection of such documents portends serious danger for the economy of the nation and the entire administration of justice. For

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instance, if all statements of accounts are to be excluded from proceedings in court on the ground that Evidence Act does not recognize computerized documents, then, a serious clog has been introduced sumptuously into the wheel of legitimate transactions and the administration of justice. This is because, most bank customers will simply take loans from banks and refuse to pay their debts because the computerized statements of account narrating the accumulated debt and interests cannot be tendered in evidence during debt recovery exercises or court proceedings by their banks. Again, those involved in e-crimes would definitely have a field day because various e-mails, faxes and e-documents and other e-messages forwarded to their victims will be inadmissible. Above all, such negative impact may even touch on the integrity of the court, as the court is capable of being perceived, albeit wrongly, by the ordinary man on the street, as shielding away criminals. The list of the negative impact of exclusion of computer generated evidence is endless (ibid, 27).

As an interim measure, the courts were advised to adopt a proactive approach in interpreting provisions of the extant Evidence Act of the time in a way to accommodate the admissibility of electronic evidence (*SDV Nigeria v. Ojo*, 2016).

2. FORMAL LEGISLATION OF ELECTRONIC EVIDENCE INTO NIGERIAN STATUTE

In 2011, the National Assembly enacted a new Evidence Act, which repealed the old Evidence Act 2004 (s.257). Significantly, the Evidence Act 2011 contains provisions for the admissibility of electronically-generated documents (s.84).

2.1 Conditions for Admissibility of Electronically Generated Documents under the Evidence Act, 2011

Section 84(1) of the Evidence Act 2011 indisputably, has filled the wide gap that existed in the repealed Evidence Act 2004, which made no specific provision for admissibility of electronically generated evidence. Section 84(2)(a)-(d) enumerated four conditions that must be satisfied before such piece of evidence becomes admissible. Section 84(4) requires that a certificate be signed to authenticate the document by a person in relation to any matter mentioned in subsection (2). For ease of reference, the said section 84 is reproduced hereunder:

- (1) In any proceeding a statement contained in a document produced by a computer shall be admissible as evidence of any fact stated in it of which direct oral evidence would be admissible, if it is shown that the conditions in subsection (2) of this section are satisfied in relation to the statement and computer in question.
- (2) The conditions referred to in subsection (1) of this section are-
 - (a) that the document containing the statement was produced by a computer during a period over which the computer was used regularly to store or process information for the purpose of any activities regularly carried on over that period, whether for profit or not by anybody, whether corporate or not, or by any individual;

- (b) that over that period there was regularly supplied to the computer in the ordinary course of those activities information of the kind contained in the statement or of the kind from which the information so contained is derived.
 - (c) that throughout the material part of that period the computer was operating properly or, if not, that in any respect in which it was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of its content; and
 - (d) that the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of those activities.
- (3) Where over a period of the function of storing or processing information for the purpose of any activities regularly carried on over that period as mentioned in subsection(2)(a) of this section was regularly performed by computers, whether-
 - (a) by a combination of computer operating over that period; or
 - (b) by different computers operating in succession over that period; or
 - (c) by different combinations of computers operating in succession over that period; or
 - (d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers. All the computers shall be treated for the purpose of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.
- (4) In any proceeding where it is desired to give a statement in evidence by virtue of this section, a certificate-
 - (a) identifying the document containing the statement and describing the manner in which it was produced;
 - (b) giving such particulars of any device involved in the production of that document, as may be appropriate for the purpose of showing that the document was produced by a computer:
 - (i) dealing with any of the matters to which the conditions mentioned in subsection (2) above relate, and purporting to be signed by a person occupying a responsible position in relation to the operation of the relevant device or the management of the relevant activities, as the case may be, shall be evidence of the matter stated in the certificate and for the purpose of this subsection, it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.
- (5) For the purpose of this section-
 - (a) Information shall be taken to be supplied to a computer if it is supplied to it in any appropriate form and whether it is supplied directly or (with or without human intervention) by means of any appropriate equipment,

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- (b) Where, in the course of activities carried on by any individual or body, information is supplied with a view to its being stored or processed for the purpose of those activities by a computer operated otherwise than in the course of those activities, that information, if only supplied to that computer, shall be taken to be supplied to it in the course of those activities;
- (c) A document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Nigerian courts have faced the challenge and the arduous task of interpreting the provisions of the Evidence Act 2011 since its enactment. A number of issues arising from the provisions of the Act have tested the capacity of the courts at interpretation as well as their malleability. Some of the identified issues are as follows and many more might likely still be considered in future.

2.2 *Old Points of Objection to Admissibility of Electronic Evidence Rendered Trifling*

Section 84 of the Evidence Act 2011 renders admissible “a statement contained in a document produced by a computer”, upon the fulfillment of the conditions stipulated therein. Under the repealed Evidence Act, three main points of objection dominated arguments of counsel whenever attempts were made to tender electronically generated evidence. First, there was always the argument that such evidence was inadmissible on the ground that the repealed Evidence Act did not recognize it. As observed in the cases earlier referred to in Part one of this work, there was no unanimity amongst the courts in Nigeria in their decisions on this point (*UBA v. Sani Abacha Foundation for Peace and Unity (SAPFU)* (Supra); and *Yesufu v. ACB* (Supra)).

Electronic Evidence therefore, became difficult to tender, needlessly though. Second, objections were also raised on the point that electronically generated evidence was not original evidence. This is clear, as almost every electronic document will invariably be stored magnetically in a way that the original version of it cannot be examined directly. Third, it was argued that electronic evidence was hearsay and inadmissible. This is however, not completely correct. The fact that a document is produced by a computer does not necessarily mean that it is hearsay (s.41 Evidence 2011). For instance, it had been held that where the computer is used only to perform calculations, its output is not hearsay and may be admitted as a piece of real evidence (*DPP v. Mckeown* 1997: 737). The same is held as true of other devices that produce automatic readouts (Glover & Murphy 2013: 324).

Under section 84 of the Evidence Act 2001, these objections have been rendered trifling and frivolous as the said section appears to have blotted out the stereotyped distinctions between primary, original, secondary or hearsay evidence, in so far as the point in issue relates to admissibility of computer generated evidence under that section. The section does not recognize the existence of any dichotomy in the nature and character of electronically generated documentary evidence as to classify it as primary, original or secondary evidence. It only recognizes “a statement in a document produced by a computer”.

In addition, section 84 does not require the production of the original of the electronic document; section 84(1) is clearly in contradiction to section 88 which requires the production of original documents. Furthermore, how a witness came about the document does not appear to be part of any issue for consideration for the court to render electronic document admissible under section 84. Once it is “a statement contained in a document produced by a computer”, it has to pass through the hurdles prescribed in section 84(2) and (4) (*Kubor & Anor v. Dickson & ors.* 2013: 534). It is clear too that an objection cannot be sustained under section 83 on the ground that the maker of the electronically generated evidence has not been called as a witness. This is because section 84 already recognizes the computer as the producer of the document. In any event, the Court of Appeal had held that when issues involve admissibility of computer-generated documents, section 83 is excluded (*Brila Energy Limited v. FRN*, 2018).

2.3 Nature of Documents under the Evidence Act

Under the repealed Evidence Act, there was the difficult task of assigning a truly comprehensive meaning to the word ‘document’. The word was also narrowly and restrictively interpreted. This limited scope of interpretation of document posed challenges and made admissibility of electronically generated documents needlessly controversial. ‘Document’ under the repealed Evidence Act was defined thus:

books, maps, plans, drawings, photographs and also includes any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of these means, intended to be used or which may be for the purpose of recording that matter (s.2).

There was consensus of jurists, authors, scholars, writers and legal practitioners that the scope of the definition was inadequate which precipitated agitation for its extension. But then, beyond the limited scope of the definition, the attitude of the Nigerian courts in interpreting the provision of the section was another matter. The main issue involved in interpreting the section was whether or not the definition was wide enough to accommodate computer storage devices or stored representation records such as PDF copies, e-mails, e-mail logs, word processing files on a computer or those records created by computer automatically, such as temporary internet files, cell phone records, computer log in records etc. Under the Act, in interpreting the word ‘document’, the courts seemed to overlook the expression “and it includes any matter expressed or described upon any substance by means of letters, figures or marks or more than any one of these” contained in the definition, which, it is inferred, covers the enlargement of the word to accommodate other materials besides paper based materials.

The decisions in *Numba Commercial Ltd. v. NAL Merchant Bank* (2001: 510), *FRN v. Abdul* (2007: 228) and *Udora & ors v. Governor of Akwa Ibom State & ors* (2010: 322) represents the attitude of Nigerian courts to the meaning of document under the old Evidence Act. In *Numba*, one of the issues that arose for determination was whether or not the bank’s record of transaction between the parties, stored in the computer and reproduced was admissible. The court, while holding such documents inadmissible, stated:

in the proper interpretation of the statute, the word in the Evidence Act does not contemplate in its ambit the information stored by the respondent to be other than in a book and the appellant cannot be said to have in his possession copies of its contents. More importantly, the contents of such information have never

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been in the possession of the person against whom it was used. It is therefore right to conclude that the information retrieved from the computer being made by the respondent for its own use, is wrong to be used in the trial against the appellant (ibid).

In *Udora*, the Court of Appeal held that the definition of ‘documents’ in section 2(1) of the repealed Evidence Act was “concise and precise” and did not include a video cassette since a video cassette shows a motion or moving picture or a magnetic tape and not a paper. Clearly, ‘document’ was meant to be understood under section 2 of the old Evidence Act as ‘any matter expressed or described upon any substance by means of letters, figures or marks or more than one of these means, intended to be used or which may be for the purpose of recording that matter’. It is interesting to note that though the Singaporean Evidence Act definition of ‘document’ is in *pari materia* with the definition of the word under the repealed Evidence Act (s.3(1) Singapore Evidence Act 2007), courts in Singapore interpreted the definition wide enough to accommodate electronically generated documents. Thus, in *Megastar Entertainment Ltd v. Odex Ltd.* (2005: 91) the argument that the definition is broad enough to encompass information recorded in an electronic medium or recording device, such as a hard disk drive installed in a desktop computer or server computer was accepted.

Under the Nigerian Evidence Act 2011, section 258(1) provides that:

Document” includes-(a) books, maps, plans, graphs, drawings, photographs, and also includes any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of these means, intended to be used or which may be used for the purpose of recording that matter;

(b) any disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced from it, and

(c) any film, negative, tape or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced from it, and

(d) any device by means of which information is recorded, stored or retrievable including computer output.

The above definition is in consonance with the true meaning of the word ‘document’ in contemporary usage. The use of the word ‘includes’ in the definition yet indicates that the category of ‘document’ under that section is not exhaustive. In *Ports and Cargo Handling Services Company Ltd & Ors v. Miafor Nigeria Ltd & Anor.* (2012) the Supreme Court explains that when the word ‘includes’ is used in a statute or written enactment, it is capable of enlarging the scope of the subject matter it qualifies or tends to qualify. The Court of Appeal, in *Holden International Ltd v. Petersville Nigeria Ltd.* (2013) has held that plastic bottles bearing trademark inscriptions are documents. This must be correct. The meaning of the word ‘document’ should no longer be construed in a narrow way. Tape recordings tendered in *Federal Polytechnic, Ede & Ors v. Oyebanji* (2012) were also accepted by the same court as documents. The same conclusion was reached in *Obatuga & Anor v. Oyebokun & Ors.* (2014) where a video tape was held to qualify as a document. The Supreme Court has also affirmed DVD as a ‘document’ in so far as it is used to record and stored information therein contained

is a statement within the intendment of section 84 of the Evidence Act (Dickson v. Sylva & ors. 2016: 56).

The current position of the Court of Appeal as exemplified in the above-mentioned decisions on the meaning of ‘document’ is in tandem with the decision of the courts in United Kingdom. In *Hill v. R* (1945: 329), Humphrey J., held that “a document must be something which teaches you something...to constitute a document, the form which it takes seems to me to be immaterial, it may be anything on which the information is written or inscribed, paper, parchment, stone or metal” (ibid, 332). It is hoped that courts in Nigeria will continue to expand the definition of ‘document’ under the Evidence Act, 2011 to meet the circumstances presented before them as they arise.

3. THE EVIDENCE ACT AND CHALLENGES OF NEW CRIMES

Information and Communication Technology (ICT) continues to play an increasing role in criminal activities, facilitated by the global nature of the internet (Faga & Ole 2011: 212). Criminals have continued to exploit the speed, convenience and anonymity that modern technologies offer in order to commit a diverse range of criminal activities (Faga 2017: 2). It seems that technology driven crimes are advancing faster than technology itself. According to Deepa Mehta:

In a digital world, there is no state or international border; customs agents do not exist. Bills of information flow effortlessly around the globe, rendering the traditional concept of distance meaningless. In the past, the culprit had to be physically present to commit a crime. Now, cybercrimes can be committed from anywhere in the world as bits are transmitted over wires, by radio waves or over satellite. Similarly, in the past, companies and banks protected their secrets and funds in locked files cabinets and vaults, in building surrounded by electronic fences and armed guards. Now, this information is located in one computer service that is connected to the thousands of other computers round the world. Robbing a bank or an armoured vehicle would pose problems of transportation and storage, whereas, transfer of huge sum of money poses no such problems in the digital world (Mehta 2010: 75).

Further examination of the complexities of the digital world and criminalities arising therein are typified in the illustrated cases hereunder. *FRN v. Ayokunmi* (2017) was a case that came up before the High Court, Kotonkaofe, Kogi State. The allegation against the accused was that, sometimes between April and June 2015, he along with some other persons, held out one Adewale Tinubu as CEO of Oando Oil Company, and in that assumed character swindled Aina Olarinde (PWI) of some millions of naira under the guise of supplying him with four thousand litres of Premium Motor Spirit (PMS) which pretence he knew to be false. The evidence before the court clearly showed that PWI connected with one ‘Adewale Tinubu’ on Facebook and WhatsApp, who posed as the Chief Executive Officer (CEO) of Oando Company. Second, the social media relationship between PWI and the said ‘Adewale Tinubu’ led to series of chats between them over time as demonstrated in the Extraction Report (Exhibit P2D). Third, consequent upon the chats, a deal over supply of 40,000 litres of PMS was struck, over which PWI transmitted money from First Bank Plc account to the Fidelity Bank account

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of one Fanimokun Azeez, who was supposed to be the Personal Assistant to ‘Adewale Tinubu’. In convicting the accused, the following remarks were made:

It should be borne in mind that this case wears the face of a modern crimes, the commission of which has been facilitated by modern technology. The social media, particularly, WhatsApp platform and internet banking facilities, which provide opportunities for anonymity and factiousness, have been effectively exploited in this case. Under the current technological and internet environments, a person does not need to be physically present to commit any of these common frauds, obtaining money by false pretence or conspiracy to commit same inclusive. Conspirators do not also need to meet physically to perpetrate their nefarious acts (ibid).

The case of *FRN v. Abdul* (2007: 204) underscores the importance of some basic training for judicial officers and practitioners. The accused was arraigned on a two-count charge of being in possession of documents containing false pretences contrary to section 6(8)(b) and 1(3) of the Advance Fee Fraud and other Related Offences Act. The accused was arrested in a cybercafé in Benin City by a group of EFCC operatives, following a petition to the Commission by a citizen alleging the incidence of internet crimes activities in the cybercafé. The accused and other customers of the cybercafé were subjected to a search, at the end of which a handwritten letter and a diary containing several e-mail addresses were recovered from the accused. The e-mails were printed out by an official of EFCC. At the trial, the handwritten letter, diary and printouts were tendered as exhibits by the prosecution. One of the questions that arose for determination by the court was whether or not the printouts which were D, D1 and D2, would be said to be in the possession of the accused, when they were not found physically with him but were printed out of his e-mail box after his arrest. The trial court held:

The documents said to be in the possession of the accused do not exist in the physical form until they are printed...I have read and construed Exhibits D-D2 clearly. Exhibits D and D1 are letters written with false pretence with intent to defraud. As for Exhibit D2, on its own, it has no meaning. Read along with Exhibits D and D1, it could be regarded as part of a fraudulent scheme. The point about Exhibit D-D1, however, is that they have been sent to the addresses on them. The accused admitted that he sent the letters. Where letters have been written and posted (in the regular and common method of sending mails), could the writer or the person who posted the letter be said to be in possession of the letter. While the writer may be guilty of sending scam letter, certainly he cannot be guilty of being in possession of a letter he has written and posted. Similarly, In this case, with the letters sent to the address as admitted, the accused is no longer in possession of the letters (ibid, 228).

The trial court discharged and acquitted the accused. The result would probably have been otherwise if a good knowledge of the intricacies of modern e-mails had been put to use in determining the outcome of the case. The trial judges rationalization of the failure of the prosecution to utilize the services of an expert witness is pathetically instructive:

The phenomenon of the e-mail box is a new technology. Evidence about how the phenomenon works must be laid before the court by a witness who may be

regarded as an expert. The prosecution did not call the said Olaolu Adegbite to tell the court how he managed to do what PW3 said he did. It must be understood that the court is not entitled to employ its own knowledge of this new technology, to complete the case of the prosecution. The problem is that with the new technology, the traditional definitions of possession...seems inadequate, to describe a situation where there are electronic mail boxes, with documents in them floating about in space. There is need to explain this to the court vide the expert witness. This would enable the court determine whether or not the face of a document floating about in space in the mail box of the accused was in his possession (ibid).

Here, while the trial court felt it was “not entitled to employ its own knowledge of this new technology, to complete the case of the prosecution”, it found it proper to employ its analogue knowledge to discharge and acquit the accused.

FRN v. Abdul (supra) contrasted with *United States v. Romm* (2006) shows that in the latter case it was held that the defendant “knowingly possessing” illegal pornography by the mere fact that he connected to the internet visited and viewed websites containing images of child pornography, which were automatically saved in the computer’s internet cache. The defendant admitted to only having viewed the images for a minute and consciously sought to delete them. Nonetheless, the court held that the defendant, “knowingly possessed” illegal pornography, as he could view the images in the computer’ internet cache on the screen, and print them, enlarge them, or copy them to more accessible area of his hard drive and send them by e-mails to others. Thus, the computer’s automatic, normal operation led to his conviction of knowingly possessing illegal pornography despite his conscious attempts to avoid pornography by deleting the images. The outcome of the decision in *Romm’s* case teaches that emphasis in *FRN v. Abdul* (supra) should not have been placed solely on the physical possession of the printouts of the soft copy of the emails contained in the computer of the accused.

In *Blaise v. FRN* (2017: 90) the court seemed to have taken a more commonsense approach. The case involved the production of a certificate of authentication in respect of a document generated in United Arab Emirate (UAE) that formed the subject matter of a case prosecuted by the Economic and Financial Crimes Commission (EFCC) in Nigeria. The document was said to have been forwarded to EFCC. The word, ‘forwarded’ used in the judgment of the court, should be understood in its ordinary grammatical sense and not in the digital sense. It is important to stress this distinction because, if the said document had been digitally forwarded, it is to be presumed that it would have been received and printed out from the computer of the Economic and Financial Crime Commission (EFCC). In that wise, it would have been the responsibility of the EFCC to satisfy the conditions in section 84(2) and produce the certificate under section 84(4). One essential foundational evidence of authentication, amongst others, that the EFCC would have established was to prove that what was produced and tendered in court was the same document that was forwarded to it from UAE, without any alteration. The EFCC or any proponent of such a document for that matter would have to mention the process of forwarding and printing so as to prove integrity in the chain of movement of the document.

Accessing data on a device and transmitting the same through forwarding process may make the authenticity of a document suspect and open to challenge. The possibility of altering

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or tampering with a document being forwarded is read as the easiest thing to do. But then, authenticity of such a document forwarded and printed out from another computer can be challenged on ground of alteration of its contents. The onus, however, lies on the party who alleges such alteration to prove same. Section 84 of the Evidence Act, 2011, recognizes that the original primary evidence of an electronically generated document cannot be expected to be brought before the court and even if it is, the same being in binary form where everything is stored in strings of zeros and ones, which is the language that computer understands, the same cannot be said to be understood by the court. The net effect of section 84 therefore, is that the output in the form of a printout or CD/DVD etc produced by a computer is rendered admissible under section 84, provided that conditions stipulated therein are fulfilled. This is the essence of section 84 of the Evidence Act, 2011.

It may well be that this fact was not appreciated at the trial court level in *Blaise v. FRN* (supra) hence the needless arguments that surrounded the admissibility of the said documents. In any event, the facts of the case revealed that the documents in contention were not printed from the computer of EFCC. For purposes of emphasis, what section 84(1) requires is not the maker of the document but its producer, which is the computer, hence, the phrase: statement contained in a document produced by a computer.

At the trial of the case, EFCC was unable to produce a certificate of authentication as required under section 84(4) of the Evidence Act, because the document was not printed from its computer. Notwithstanding this fact, the document was admitted by the trial court as Exhibit 'A'. The Court of Appeal affirmed the decision of the trial court. The approach of the Court of Appeal in tackling the issue of non-certification was one of commonsense. Oho, J.C.A. held:

The mere fact that compliance is demanded as a matter of law with the provisions of section 84 and its sub-provisions on the admissibility of computer generated documents, does not mean that we should as well consign the use of ordinary commonsense required for doing most things to the dustbin. There is no way in the circumstances of the case that the EFCC would be in any position to produce a certificate stating the status of the computer from which the complainant/petitioner generated exhibit 'A' in the UAE. It must be borne in mind that the said exhibit 'A' having been forwarded to the EFCC and not printed from its computers, that by asking the EFCC to produce a certificate in order that there may be compliance with the section is to seek the performance of a feat by the EFCC which is clearly unattainable (*Blaise v. FRN*, (Supra) 132).

One cannot but agree with His Lordship that issues relating to admissibility of evidence should ultimately have elements of commonsense attached to them. Most respectfully however, it has to be noted that any commonsensical framework that will be applied to issues of admissibility of electronic evidence must concur with law and procedural rules. The significance of admissibility of evidence, generally, in the process of attaining justice is immense such that it cannot be left completely to commonsense to determine in all circumstances. Accordingly, it is submitted that courts should go beyond the commonsense approach in addressing these seemingly intractable problems (Adekilekun, Sambo & Ali 2020: 109).

One of the cogent points established in *Brile Energy Limited v. FRN* (2018) is that, where many computers are involved in the production or reproduction of a document, it is the computer that ‘produces’ or ‘reproduces’ the document that is before the court that requires certification. The issue in contention in the case was whether or not the trial judge rightly admitted in evidence and relied on the internet printout copy of Lloyds List of Intelligence Report as well as the hearsay testimony of PW9 who tendered same in evidence for the purpose of establishing the truth of prosecution’s allegation that the mother vessel, M/T LIMAR was not at the Port of loading and point of trans-shipment. It was held that the authentication of the computer that downloaded and printed out the information was proper. Section 34 of the Evidence Act, 2011, recognizes the possibility of reproduction of electronic documents and therefore, prescribes it as one of the factors to be considered by the court in ascribing weight to such evidence. The fact that a document is reproduced by another computer is not a relevant factor to its admissibility or inadmissibility as the case may be; it only becomes relevant at the point the court ascribes weight to the evidence. What is more, section 84(5)(c) of the Evidence Act 2011 provides that, “a document shall be taken to have been produced by a computer whether it was produced by it already or (with or without human intervention) by means of any appropriate equipment”.

The case of *Daudu v. FRN* (2018) raises a very fundamental point and challenges the well-established principle that computer generated documents are only admissible in evidence upon compliance with section 84(2) and (4) of the Evidence Act, 2011. In *Brila Energy Ltd. v. FRN* (2018), Sankey, JCA, emphasized the importance of fulfilling the requirements in section 84 to render electronically generated documents admissible. In that case, it was held that computer-generated documents are only admissible in evidence in compliance with section 84. His Lordship stated thus:

The provisions of section 84, which state the conditions for admitting in evidence any electronically generated document, are central in admitting a document emanating from a computer.

In *Kubor v Dickson* (2013: 534), the Supreme Court held that the computer-generated documents Exhibits ‘D’ and ‘L’ in that case, which did not comply with the pre-conditions laid down in section 84(2) were inadmissible. *Daudu’s case* is a complete departure from the standard set in *Kubor v. Dickson*. Significantly, the Supreme Court acknowledged that the documents involved (banks statement of accounts) were computer generated. Learned counsel for the appellant had argued that the documents did not comply with the mandatory provisions of section 84(1),(2) and (4), before they were admitted. From the record of the court, there was, indeed, no oral evidence proffered under section 84(2). There was also no certificate of authentication/trustworthiness tendered at trial in accordance with section 84(4). However, the Supreme Court held the documents to have been properly admitted upon a presumption that, “before the banks surrendered them to the EFCC, they must have certified the contents of the statement of accounts contained therein were correct (*Daudu v. FRN* 2018). There was even no proof that the contents of the document were certified. In the circumstances of *Daudu’s case*, the certification would certainly not satisfy the provisions of section 84 even if the documents were so certified.

On the face of it, *Daudu’s case* has the effect of whittling down the effect of section 84 of the Evidence Act, 2011. However, attention must be paid to the salient but crucial point that

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approval of the documents as admissible evidence by the Supreme Court was not solely based on the fact of certification by the banks. The decision of the apex court was based more on the fact that the appellant himself relied on the same documents of his defence. It was, therefore, held that, “he cannot rely on the documents for his defence and at the same time ask that they be expunged from the records” (ibid). The Supreme Court approved the statement of the trial court that the appellant cannot approbate and reprobate at the same time. This is a most prominent distinguishing feature in the case that may not make it a relevant authority in all circumstances. As a matter of fact, *Daudu’s case* was decided on its own peculiar facts and ought not to stand as an authority for a proposition that computer generated statements of accounts need not comply with section 84(1),(2) and (4) of Evidence Act, 2011.

In the case of *Jubril v. FRN* (2018), it was the contention of appellant’s counsel that Exhibit P7 was inadmissible on the ground, *inter alia*, that being computer-generated documents, the certificates of authentication required by section 94(4) of the Evidence Act, 2011, was not tendered. It was held that the requirement of section 84(2) and (4) of the said Act can be satisfied by oral evidence of a person familiar with the operation of the computer as to its reliability and functionality. At this point, let us pause and ponder on the following puzzle: what happens if the computer of the proponent of Exhibit P17 did not produce Exhibit P17? Will he be expected to offer oral evidence to establish the reliability and functionality of a computer he is not familiar with?

These are not hypothetical questions. The Court of Appeal was confronted with this type of situation in *Blaise v. FRN* (supra) where the computer that produced the documents in question was in United Arab Emirate and it was impossible for any witness to testify to the functionality and reliability of the computer. To this end, one cannot agree less with the recommendation of the Honourable Justice Alaba Omolaye Ajileye while elucidating on the exceptions to section 84(4) of the Evidence Act 2011, thus:

The scope of the applicability of section 84(4) should be limited to a proponent whose computer device produced the electronic documents. In other words, production of a certificate as an essential element of process of authentication should be made mandatory where a proponent is in control of the device that produced the document...the law should not be too strict on a party whose computer did not produce the electronic document and it becomes impossible for him to produce same (Alaba, 2016:25).

CONCLUSIONS

So far within the judicial landscape of Nigeria, the journey of electronic evidence has been long-winding and tortuous and can also be described to have been bumpy and chaotic. The real issue right now is to decipher where we currently are in this inquiry. Having discussed some of the contradictory decisions of courts on the issue of admissibility of electronic evidence even after the enactment of the Evidence Act 2011, one may be tempted to conclude that the true position of the law is still hazy. However, it seems that the true position will be made clearer when all impediments in the nature of technicalities are removed on the way of admissibility of such evidence. For instance, one may ask, what is the essence of production of a certificate under section 84(4) by a party whose computer did not produce the document in

contention? In the first place, how is he to certify the functionality of trustworthiness of a computer he is not familiar with? In practical terms, this basically constitutes one of the greatest impediments to admissibility of electronic evidence. A party who is not in possession or control of the device from which the document is produced should not be required to produce certificate under section 84(4). Section 84(4) may have to give way to a simple presumption that mechanical and electronic devices worked well when they produced the affected documents until the contrary is proved. The onus is on the party who holds a contrary view to prove same (Alaba, 2016). The state of Singapore has proceeded on this course by enacting three presumptions, viz

- (i) Presumption that mechanical devices were in order when they were used.
- (ii) Presumption of authenticity of business records of someone who is not a party to civil or criminal proceedings.
- (iii) Presumption of electronic records obtained by a proponent from an adverse party to a civil or criminal proceedings (s.81 Singapore Evidence Act 2007).

These presumptions, which are humbly recommended strongly, are revolutionary steps to liberalize admissibility of electronic evidence in any jurisdiction determined to purposively keep abreast of all the latest developments of computing.

REFERENCES

1. Adekilekun, M.T. Sambo, A.O. & Ali, Y. (2020). 'Oral Evidence and Certificate of Authentication in the Admissibility of Electronic Evidence in Nigeria: An Imperative', *International Journal of Comparative Law and Legal Philosophy* 2(3): 106.
2. Aguda, T.A. (2007). *Law of Evidence*, 2nd Edition, (Ibadan: Spectrum Law Series).
3. Alaba, O.A. (2016). 'Admissibility of Electronic Evidence in Civil and Criminal Proceedings', National Judicial Institute Refresher course for Magistrates, Abuja, available at: https://nji.gov.ng/images/Workshop_Papers/2016/Refresher_Magistrates/s09.pdf (accessed 17th February 2023).
4. Alaba, O.A. (2018). *Electronic Evidence* (Ibadan: Juris Publication Series).
5. Aziken, E. (2009). 'Senate Moves to Amend 64 Year Old Evidence Act', available at: <https://www.vanguardngr.com/2009/07/senate-moves-to-amend-64-year-old-evidence-act/> (accessed 16th February, 2023).
6. Erugo, S. (2020). 'Admissibility of Electronic Evidence in Nigeria: Some Contending Issues', *Benson Idahosa University Law Journal*, 2: 22.
7. Faga, H.P. (2017). 'The Implications of Transnational Cyber Threats in International Humanitarian Law: Analysing the Distinction between Cybercrime, Cyber Attack, and Cyber Warfare in the 21st Century', *Baltic Journal of Law & Politics* 10(1): 1.
8. Faga, H.P. and Ole, N. 'Limits of Copyright Protection in Contemporary Nigeria: Re-examining the Relevance of the Nigerian Copyrights Act in Today's Digital and Computer Age', *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* (2011) 2: 211.
9. Glover, R. & Murphy, P. (2013). *Murphy on Evidence* 13th Ed. (Oxford University Press, 2013).
10. Metha, D. (2010). 'Economic Crimes in a Globalizing Society: Its Impact on the Sound Development of the State – An India Perspective', 126th International Senior Seminar

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Visiting Experts' Papers: Resource Materials No.66, available at: https://www.unafei.or.jp/publications/pdf/RS_No66/No66_10VE_Mehta1.pdf (accessed 17th February 2023).

Legislation and Cases

11. Nigerian Evidence Act 2011.
12. Singapore Evidence Act 2007.
13. *Alhaji Yesufu v. Egbe* (1987) 72 NWLR (Pt. 56) 341.
14. *Anyaebosei & Ors v. R.T. Briscoe Nig. Ltd.* (1987) 13 NWLR (Pt.836)108.
15. *Bangboye v. University of Ilorin* (1991) 8NWLR (Pt.207) 1.
16. *Blaise v. FRN* (2017) 6 NWLR (Pt. 1560) 90.
17. *Brila Energy Limited v. FRN* (2018) LPELR-CA/L/658 CA/2017.
18. *Daudu v. FRN* (2018) LPELR-SC172/2017.
19. *Dickson v. Sylva & ors* (2016) LPELR-41257.
20. *DPP v. Mckeown* (1997) 1 All ER 737.
21. *Egbue v. Arake* (1996) 2 NWLR (Pt. 433) 688.
22. *Esso West Africa Inc. V. T. Oyegbola* (1969) NMLR, 194.
23. *Federal Polytechnic, Ede & Ors v. Oyebanji* (2012) LPELR 19696 (CA).
24. *FRN v. Abdul* (2007) 5 EFCLR 204.
25. *FRN v. Ayokunmi* Case No:HC/56C/2016 delivered on 12th October, 2017 (unreported).
26. *FRN v. Femi Fani Kayode* (2010)14 NWLR (Pt.1214) 481 CA.
27. *Hill v. R.* (1945)3KB 329.
28. *Holden International Ltd v. Petersville Nigeria Ltd.* (2013) LPELR-21474 (CA).
29. *Jubril v. FRN* (2018) LPLER-45650 (CA).
30. *Kubor & Anor v. Dickson & ors.* (2013) 4 NWLR (Pt. 11345) 534.
31. *Mackans v. Inlaks Ltd* (1980)8-11 SCJ.
32. *Megastar Entertainment Ltd v. Odex Ltd.* (2005) SLR 91.
33. *Narlis v. South African Bank of Anthens* (1976) 2 SA. 572(A).
34. *Numba Commercial Ltd. v. NAL Merchant Bank* (2001) 16 NWLR (Pt. 740) 510.
35. *Nwana v. Federal Capital Dev. Authority* (1999)10 CLRN, 63.
36. *Obatuga & Anor v. Oyebokun & Ors.* (2014) LPELR 22344 (CA).
37. *Oghonoye v. Oghonoye* (2010) LPELR 4699 (CA).
38. *Ojolo v. IMB (Nig) Ltd.* (1995) 9 NWLR (Pt. 419) 304.
39. *Ports and Cargo Handling Services Company Ltd & Ors v. Miafor Nigeria Ltd & Anor.* (2012) LPELR-9725 (SC).
40. *SDV/Nigeria Ltd v. Ojo & Anor* (2016) LPELR-40323 (CA).
41. *Trade Bank v. Chami* (2003) 13 NWLR (Pt. 836) 158.
42. *UBA v. Sani Abacha Foundation for Peace and Unity (SAPPU)* (2004) 3 NWLR 12 (Pt.861) 516.
43. *UBA v. SAPFU* (2001)16 NWLR (Pt. 740) 510.
44. *Udora & ors v. Governor of Akwa Ibom State & ors.* (2010) 1 NWLR (Pt. 1205) 322.
45. *United States v. Romm* No. 04-10648 of July 24, 2006.
46. *Yesufu v. ACB* (1976) 1 ANLR (Pt. 1) 328.